IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 31305 of 2006(B)

OS.3229/2005 of PRL.MUNSIFF COURT,THRISSUR

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PETITIONER:

SREEDEVI, AGED 48, D/O.CHANDRIKA,
KADANGOTTU HOUSE, POONKUNNAM VILLAGE DESOM,
THRISSUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT:

SANKARANARAYANAN,
S/O.KADANGODU JANAKI AMMA, POONKUNNAM VILLAGE
DESOM, THRISSUR TALUK.

BY ADV. SRI.K.P.SREEKUMAR
SRI.P.M.SATHEESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 31305/06)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.NO.3229/05 ON THE FILE OF THE PRINCIPAL MUNSIFF COURT, THRISSUR.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENT IN EXT.P1 SUIT.

EXT.P3: TRUE COPY OF THE ORDER PASSED IN I.A.NO.9626/06 IN O.S.3229/05 BY THE PRINCIPAL MUNSIFF COURT, THRISSUR.

RESPONDENT'S EXT.:

EXT.R(1): TRUE COPY OF THE OBJECTION FILED BY THE PLAINTIFFS TO I.A.9626/06.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.31305 of 2006

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Dated: 19th July, 2007

JUDGMENT

In this Writ Petition under Article 227 the petitioner who is the third plaintiff in Ext.P1 suit for partition impugns Ext.P3 order under which the learned Munsiff allowed an application filed by the respondent-defendant for raising additional issue as to whether the valuation of the suit is proper and whether the court fee paid is sufficient. Under the impugned order the learned Munsiff not only allowed the application which was filed after the evidence of the plaintiff was completed but also found that the suit was not properly valued and directed the plaintiff-petitioner to amend the valuation portion of the plaint in the light of the observations in the order. Impugning Ext.P3 on various grounds the Writ Petition is filed seeking to set aside Ext.P3.

2. A very detailed counter affidavit has been filed by the respondent justifying Ext.P3. Along with the counter affidavit the respondent has produced Ext.R1 which is copy of the objection filed by the petitioner to the application filed by the respondent which resulted in the impugned order.

3. I have heard the submissions of Mr.G.Sreekumar(Chelur),

learned counsel for the petitioner and Mr.K.P.Sreekumar, learned counsel for the respondent.

4. Flaying the impugned order on various grounds Mr.Sreekumar(Chelur) would submit that the impugned order is not at all sustainable since what the learned Munsiff has done is to formulate a preliminary issue after the trial of the suit was more than half way through. Placing strong reliance on the judgment of a Division Bench of this court in **We-Build Pvt. Ltd. v. C.Kamaleswaran** (1981 KLT 773). The learned counsel would argue that the impugned order violates the mandates of Section 12(2) of the Kerala Court Fees and Suits Valuation Act as expounded by the Division Bench in **We-Build Pvt. Ltd. v. C.Kamaleswaran** (supra). Counsel also submitted that the court below was not justified in carrying out certain stray passages in the plaint regarding the value of the property to support its conclusion that even on the admissions of the plaintiff the value is much more than what is presently shown. Pleadings had to be appreciated in the context in which they were made and at any rate had to be construed as a whole. Learned counsel submitted that the objection of the respondent in filing the belated application for raking up the question of valuation and court fee was only to protract the litigation further so that the petitioner

who include old ladies in misery will be compelled to suffer further hardships.

5. Mr.K.P.Sreekumar, learned counsel for the respondent would defend the impugned order very ably. The learned counsel would submit that the petitioner and her fellow plaintiffs in the suit are only taking advantage of their own wrongs in valuing the suit in properly despite their concern that the market value of the property is much more than the present valuation. This cannot be permitted submitted the learned counsel referring to the maxim 'Nullus Commodum Capere Potest De Injuria Sua Propria' which means that no one can take advantage of his own wrong. Learned counsel relied on the later judgment of a Division Bench of this court in **P.P.S.Pillai v. Catholic Syrian Bank** (2003(3) KLT 629) to submit that the law allows a real and meaningful say to the defendant also in the matter of valuation of a suit filed against him and it is a very valuable right of the defendant to have immunity from a litigation unless the court fees required by law is paid on the plaint by the plaintiff. Learned counsel relied on the judgment of K.Thankappan,J. in **Cherootty v. Purushothaman** (2005(2) KLT 84) and in fact in paragraph 14 of the judgment of this court in **We-Build Pvt. Ltd. v. C.Kamaleswaran** (supra) itself to argue that the court has an

obligation to see that nobody gets reliefs without paying proper court fee and to ensure that the revenue collects the correct court fee before relief is given to anybody. Towards the end of the submissions, the learned counsel would cite before me the judgment of M.Sasidharan Nambiar,J. in **Nabeesa v. Kuhnami** (2006(4) KLT 757) wherein the learned Judge has given a very lucid expatiation of law regarding the mode in which suit for partition and separate possession of properties in joint possession are to be valued for the purpose of court fees.

6. I have very anxiously considered the rival submissions addressed before me by the learned counsel in the light of the ratio emerging from the various decisions cited at the Bar. I have also considered the implications of the maxim 'Nullus Commodum Capere Potest De Injuria Sua Propria' which was pressed into service by Mr.K.P.Sreekumar.

7. The contours of this court's supervisory jurisdiction under Article 227 of the Constitution are very narrow. I will not be able to say that the impugned order suffers from infirmities to the extent of warranting correction by this court under the supervisory jurisdiction which is visitorial in nature and is expected to be invoked only in exceptional circumstances. The impugned order is certainly

sustainable on the principles laid down by the decisions cited at the Bar by Mr.K.P.Sreekumar. There appears to be some genuineness in the apprehension of Mr.G.Sreekumar that the present order may result in delaying the final disposal of the suit. Those apprehensions in my opinion can be taken care of by issuing appropriate directions to the Subordinate Judge who alone will have pecuniary jurisdiction to entertain the suit in the light of the findings in the impugned order. I sustain the impugned order. The learned Munsiff is directed to return the plaint for presentation before the proper court, namely, the Subordinate Judge's Court, Thrissur. That court is directed to try the suit from the stage at which the plaint was returned by the learned Munsiff to the plaintiffs. All proceedings so far taken in the suit in the Munsiff's Court will be treated by the learned Subordinate Judge as valid. Top priority will be given by the learned Subordinate Judge for the trial of the suit by special listing the suit in the earliest available special list and dispose of the same at his earliest.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**